

“Guardianship” Questions & Answers for Families and Friends of Adults With Disabilities

1. Q - When Is Guardianship Necessary?

A - The purpose of guardianship is to ensure that continuing care is provided for a person, 18 years or older, who is unable to make decisions for him or herself. A disability alone is not sufficient reason for guardianship. The critical factor is that the person must be unable to make or communicate responsible decisions for him/herself.

Guardianship can be tailored to meet the particular needs of the individual. On the other hand, guardianship can impose a severe restriction on a person's right to make decisions on matters most of us take for granted, such as where we live, medical treatment, and with whom we socialize.

Perhaps the best guide to answering the questions of why and when guardianship is necessary was given by Judge James E. Mitchell of the Kennebec County Probate Court. Before seeking guardianship, Judge Mitchell recommends that a potential guardian should identify the benefits the individual will gain from having a guardian compared with the consequences of not having a guardian.

The criteria for guardianship for persons under 18 years of age are not the same as for adults and are based more on age and age-related circumstances. (refer to [MRSA 18-A, §5-201](#))

All of us have strengths and weaknesses. We're fortunate in Maine that protection can be provided for persons in their area of weakness without limiting their decision-making rights in their area of strength. For example, there is no need to take away a person's right to decide where to live because that person needs help making medical decisions or handling finances. In such instances, other alternatives to full guardianship must be considered, such as Limited or Temporary Guardianship. In other instances, guardianship can be avoided altogether through Power of Attorney agreements, Trusts, and Representative Payeeships. These alternatives are described in more detail in the sections that follow. We hope the information on these pages will be a guide to assisting the reader in understanding the options and responsibilities of guardianships.

2. Q - What Is a Power of Attorney?

A - Power of Attorney is a written document by which a person legally delegates to someone else a part or all of his/her authority to make legal decisions on certain matters on a short or long-term basis.

Any person who is able to make his/her own decisions, but who wants to plan for a possible future incapacity, may delegate any part of his/her own decision-making power to someone else through a lasting or "durable" power of attorney, which must be notarized. A durable power of attorney which gives the power to consent to medical or other professional care cannot later be overridden by the guardian, unless the guardian petitions the probate court and obtains permission to do so. ([5-501](#))

A guardian may transfer "power of attorney" to another person or organization in a written, notarized statement filed with the probate court. This type of power of attorney is effective for up to six months but can be renewed. ([5-104](#))

3. Q - What is Representative Payeeship?

A - If a person's source of income is from Social Security Disability (SSDI) or Supplemental Security Income (SSI), a representative payeeship may be arranged with the Social Security Administration. A representative payee is an individual or organization that manages the money provided by these benefits to ensure that housing, food, clothing, personal spending, and other living expenses are met.

4. Q - What IS A Special Needs trust?

A - Trust agreements are sometimes established when the money being provided comes from an inheritance or legal settlement. In this case, an agreement is drawn up naming a trustee, an individual(s) who will be responsible for ensuring that money from the trust is used appropriately. Trust agreements should be drafted with legal assistance, and consideration needs to be given to the trust's impact on the person's government benefits (e.g. SSI and Medicaid).

While trusts may be set up in various ways, a "Medicaid qualifying" or special needs trust which does not jeopardize the person's SSI and Medicaid benefits allows the individual to purchase things that are not reimbursed by Medicaid. Examples might be a vacation, a washer or dryer, etc.

5. Q - What Is A Guardian?

A - A guardian is an individual, organization, or State agency that is appointed by the Probate Court in the prospective ward's county of residence and is given the authority to make decisions on behalf of the person found by the court to be incapacitated.

Unless otherwise indicated, the term "guardian" or "guardianship" means full responsibility for decision-making for all facets of a person's life, except those specifically excluded by other sections of state law, such as sterilization or involuntary commitment to State institutions. This complete guardianship may also be known as a plenary, general, or full guardianship. ([5-304](#))

6. Q - What Is A Ward?

A - A ward is a person for whom a guardian has been appointed. ([5-101\[4\]](#)).

7. Q - Who Is An Incapacitated Person?

A - An incapacitated person, as determined by the court, is "any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority (below the age of 18 years) to the extent that he/she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his/her person." ([5-101](#)).

8. Q - What Is A Limited Guardianship?

A - Some persons are able to make responsible decisions in some but not all areas of their lives. In such situations, a guardianship may be limited by the court to only those areas in which the person is not able to make responsible decisions. For example, guardianship could be limited to providing consent for medical treatment. ([5-105](#)) Since Probate Law encourages maximum independence for people, a limited guardianship is usually preferable to full guardianship. ([5-304](#) [5-408](#))

9. Q - What Is A Temporary Guardianship?

A - A temporary guardian may be appointed by the court for the following reasons: In emergencies when a person has no guardian. The court may act as the guardian for the emergency only or may appoint a guardian immediately; or When the already appointed guardian is not effectively performing his/her duties and immediate action is necessary on behalf of the ward. The court may then appoint a temporary guardian for no longer than six months until a permanent guardian can be appointed.

The temporary guardian has all the powers and responsibilities of the permanent guardian except that he/she may not place the ward in any in-state mental health institution or any institution outside the state against the ward's wishes. ([5-310](#)).

10. Q - What Is A Conservator?

A - A Conservator is an individual or organization appointed by the court to protect and manage the finances and property of a person in need of protection from exploitation or mismanagement of his/her funds. ([5-401](#))

11. Q - What Is The Relationship Between a Guardian And A Conservator?

A - A guardian makes decisions about the ward's life and well-being. A guardian can also make decisions about a person's money and property if the value is small and no conservator has been appointed. If there is a conservator appointed by the court, the conservator will make the decisions about the ward's money and property. The same person may be both the guardian and conservator or there may be a different person for each responsibility. ([5-312](#))

12. Q - Who Can Be A Guardian?

A- Any able and willing adult, organization, institution, or selected State agency may be the guardian. The Probate Court will make the final decision, keeping the best interests of the person in need of a guardian in mind.

The general exception is that a residential owner, proprietor (excluding foster care), administrator, or employee of a medical facility which is licensed under MRSA Title 22, sections 1817 and 7801 and provides the residence of the person may not act as a guardian for that person, unless that adult is also a relative or prospective guardian identified through a will (testamentary guardian). ([5-311](#))

13. Q - Why Aren't The Parents Automatically The Guardians Of Their Adult Children?

A - The law presumes that all persons eighteen years of age and older are competent to make their own decisions unless proven otherwise. Parental legal rights end when a child reaches the age of maturity (18 years of age in Maine). The child legally becomes an adult at that age with a legal right to make decisions about him or herself regardless of disability. In order to continue their parental authority after their child turns eighteen, the parents must file for guardianship of their adult child. Either one or both parents may be the guardian(s).

14. Q - What Is The Difference Between A Public And Private Guardian?

A - Public guardianship means an agency of the state government is the guardian. All other guardianships are considered private. A public guardian will be appointed only if there is no private individual who is both willing and able to assume the responsibilities

of a guardian. A public guardianship is the last priority for appointment by the Probate Court. (5-11[c]; [5-601](#); [5-602](#)).

The guardian/ward relationship is usually best when there is a bond between the two people that goes beyond the guardianship itself. While the State can be a competent (public) guardian and social workers can be caring and conscientious, generally the personal involvement of someone such as a parent, relative, or friend is preferable.

15. Q - What Are The Probate's Court's Priorities In Appointing A Guardian?

A - The Probate Code specifies the following order of preference for appointing a guardian:

- The individual or organization named by the person in need of a guardian.
- The spouse.
- An adult child
- A parent -- or person nominated by the will of a deceased parent.
- Any relative with whom the person in need of a guardian has lived for more than six months prior to the filing of the petition.
- A person nominated by the individual who is caring for the prospective ward or paying benefits to him/her. ([5-311](#))
- State government agency (Public Guardian).

16. Q - What determines whether the OACPDS or the OES becomes the public guardian?

A - By statute the Office of Adults with Cognitive and Physical Disability Services may act as the public guardian or conservator for adult persons with mental retardation and/or autism. The Office of Elder Services may act as public guardian or conservator for all other persons. In either case, a person must be determined to be incapacitated and in need of a guardian by a Probate Court. ([5-601 \(b\)](#)).

17. Q - Does Guardianship Transfer Across State Lines?

A - While some states may honor a guardianship established in another state, it is best to file a petition for guardianship in the state in which the question and the ward are currently living. If the guardian and the ward live in different states, it usually works best if the guardianship is established in the state in which the ward lives. Because the rules, powers, and responsibilities of guardianship vary from state to state, the guardian should become familiar with those of the state in which the guardianship is established. ([5-403](#))

18. Q - What Are The Powers Of A Guardian?

A - Powers:

Traditionally, the power of a guardian over the ward has been viewed by the courts in roughly the same way as the power of a parent over a minor child, except that (1) the guardian does not have to provide for the ward out of his/her own funds and (2) he/she is not liable to third persons for the acts of the ward just because he/she is the guardian. The guardian may decide where the ward will live and may request the placement of the ward in a hospital or institution. Such a placement, however, cannot be made solely on the authority of the guardian but must follow the relevant laws for the admission of any person to such a facility. The guardian may consent for the ward to receive medical or other professional treatment, counseling, care, or services except for sterilization for which there is a separate legal procedure. (34-B M.R.S.A. 7011)

Under limited guardianship these powers and duties are restricted to specific areas and issues as identified by the court in the court order at the time the guardian is appointed. ([5-312](#))

Duties:

A guardian is required to report to the court about the condition of the ward and the ward's property if the property is under the guardian's control.

The guardian must ensure for the care, comfort, and maintenance of the ward, and, whenever appropriate, arrange for his/her training and education. The guardian shall take responsible care of the ward's clothing, furniture, and other personal effects and initiate protective proceedings if property of the ward is in need of protection.

If a conservator for the ward's estate has not been appointed and the guardian controls the ward's property/finances, the guardian may:

1. start proceedings to compel any person who is responsible for the support and welfare of the ward to fulfill these obligations, and
2. receive money/property due to the ward up to approximately \$5,000 and use it appropriately for the support, care, and education of the ward. Any excess must be conserved for the ward. If the ward is living with the guardian or the guardian's relatives, the guardian cannot take money for room and board from the ward's estate without approval of the court.

If a conservator has been appointed to handle the ward's estate, the guardian may

1. receive reasonable sums of money for the ward's room and board, through an agreement with the conservator if the ward lives with the guardian, and
2. account to the conservator for any of the ward's funds under the guardian's control expended to provide support, care, and education for the ward and return any excess to the conservator. ([5-312](#))

19. Q - Does The Ward Retain Any Rights While Under Full Guardianship?

A - The imposition of full guardianship is a serious step that limits the rights of the ward by appointing a guardian to make decisions for the ward. If the ward or any person interested in the welfare of the ward disagree with the guardian about what rights may be appropriately exercised by the ward, he/she may petition the Probate Court for resolution of this conflict. ([5-312](#))

20. Q - Are There Limits Upon The Power Of The Guardian Over The Ward?

A - As a practical matter, the guardian may not be able to control all aspects of the ward's life. It is usually best for the guardian to recognize that the ward may well have certain needs or wants, such as where the ward prefers to live, which may not accord with the guardian's plans. The guardian should respect those needs and wants. This can and should be done on an individual basis, taking into account both the wishes and capabilities of the ward and the wishes of the guardian.

Guardianship is not necessarily the solution to the issues that may accompany a disability. It is also not an effective means of controlling specific behaviors nor a way of imposing a value system on another human being.

21. Q - To what extent can the guardian impose his personal likes, dislikes, values, or ideas upon the ward?

A - Probate Law has adopted a policy which favors the least restrictive protective arrangements which can be made for a person in need of a guardian, encouraging the greatest possible development of that person's self-reliance and independence. ([5-304](#)) However, the guardian is appointed to protect the ward and make decisions that the ward would make if he/she were able to rather than to impose the guardian's own ideas. The guardian has a great deal of authority to structure the ward's life unless these decisions conflict with the best interest of the ward.

You will often hear the terms "least restrictive" or "least restrictive alternative" used in reference to people who are under guardianship, in treatment, or institutionalized. These phrases refer to the idea that people should be protected or assisted in a way that allows them to live as independently as possible and to do as much as they can for themselves -- to use and increase the skills they have, to work, to go to school, etc. By assisting people to live as independently as their capabilities will allow, we are promoting their maximum personal growth.

Probate Law favors "Least Restrictive" in reference to guardianship, which means using Limited or Temporary Guardianship, Conservatorship, or Power of Attorney rather than full guardianship whenever possible and encouraging the ward to participate in decision-making.

22. Q - What Obligation Does The Guardian, Public or Private, Have To Involve The Ward Decisions About The Wards?

A - It is the guardian's duty to act in accordance with the ward's instructions or wishes -- expressed or as ascertained to be prior to the guardianship -- or in the best interest of the ward. Ideally, this includes discussing with the ward his/her needs and interests and involving him/her as much as possible in any decisions made or actions taken. The ultimate decisions are left to the guardian.

23. Q - Can The Guardian Place The Ward In A State Institution?

A - On his/her own authority, the guardian can not. The guardian may apply for the placement of the ward in a State institution. However, other laws and regulations regarding the admission of any person must be followed for the ward just as for anyone else.

The guardian does, on the other hand, have the authority to place a ward in a private facility on a voluntary basis, unless the ward objects. ([5-312](#))

24. Q- Can A Ward Be Placed In A State Institution Against The Guardian's Wishes?

A - Only through commitment/certification by a District or Superior Court or by a properly authorized emergency transport order. ([34-B 5477](#))

25. Q - Is The Guardian Legally Responsible For The Financial Acts Of The Ward?

A - The general answer is no. The guardian is not legally obligated to provide for the ward with his/her own funds and is not liable to others for any financial acts of the ward simply because he/she is the guardian.

26. Q - Is The Guardian Legally Responsible For Civil Actions Involving The Ward?

A - Again the answer is generally no, unless there was negligence on the part of the guardian. ([5-312](#))

27. Q - How Does The Guardian Actually Handle The Ward's Finances?

A - If the ward has substantial property or funds, a conservator or other third-party may be chosen to handle the finances instead. When the estate of the ward is under \$5000, the guardian may manage the ward's financial affairs.

As long as the guardian acts in the best interest of the ward and meets the standards set by the law, the decisions about how to handle the ward's finances are left to the guardian.

The Probate Court, however, does have power to monitor the way in which the guardian invests the ward's estate. The guardian should be careful to keep the money in the ward's estate separate from the guardian's own estate; for instance, the guardian should use separate bank accounts for the ward's estate and not mix together the ward's assets (such as a bank account) with a personal bank account of the guardian.

In any case, records must be maintained of all financial transactions related to the ward and the ward's estate. The guardian, or conservator if one has been appointed, will be held accountable to the Probate Court for these financial transactions. ([5-312](#)).

28. Q - How Does Guardianship Affect Representative Payee Status?

A - A representative payee may be appointed by a government agency to handle the benefits provided by that agency to the person. This has nothing to do with the guardianship. If the guardian wishes to be the representative payee, the guardian may apply to the agency which provides the benefits (for example, the Social Security Administration) to be made the representative payee for the ward. The agency providing the benefits has the authority, however, to appoint any person it chooses to be the representative payee.

29. Q - What If Agencies Are Not Providing Requested Or Needed Services?

A - If this happens, there are a number of administrative appeal procedures in agencies (such as contacting the supervisor, administrator, or advocate), and the guardian should follow these. However, if no action is forthcoming, the guardian may approach the Probate Court to indicate his/her resulting inability to meet part or all of the ward's needs.

30. Q - Where and How Can Guardianship Be Requested?

A - The Probate Court in the county in which the proposed ward lives is usually the court to which a petition for guardianship is submitted. A physician's or psychologist's report, providing the diagnoses and the actual mental and functional limitations and prognoses which demonstrate the need for the guardianship, must be submitted to the Court. The proposed guardian must also submit a plan detailing how the ward's financial, medical, and other needs will be met.

If the person does not have an attorney, the court will appoint one or more of the following: a visitor, a guardian ad litem, or an attorney to represent the person in the proceedings. If the person already has an attorney, the court may still appoint a visitor and/or guardian ad litem.

After the petition, the plan, and all reports are submitted to the Probate Court, the court will schedule a hearing. At the hearing, the proposed ward or his/her attorney may present pertinent facts related to the guardianship and cross-examine witnesses. ([5-302](#); [5-303](#)) (Amended)

31. Q - Is An Attorney Necessary To Apply For A Private Guardianship?

A - If the guardianship might be contested or if the finances/property are large or complex, it is recommended that an attorney be retained. However, most of the forms are simple and self-explanatory and do not necessarily require an attorney's assistance, particularly if the guardianship is an uncontested one.

32. Q - Where Can I Get Assistance About Guardianship Procedures?

A - Many Registers and Clerks of the Probate Court can be very helpful in explaining necessary forms and how to fill them out. Attorneys familiar with guardianship law and procedures could, of course, be of great assistance. Caseworkers in agencies may be able to explain general procedures. The Guardianship Program in the Department of Health and Human Services may also be of assistance.

Because the focus of the guardianship is the well-being of the person, Probate Court procedures are generally more informal than in other courts. The Judges and Registers of Probate can be helpful with any questions or concerns.

33. Q - What Is A Guardian Ad Litem?

A - A guardian ad litem is appointed by the Probate Court for the alleged incapacitated person when the court is concerned that the best interest of this person is not being adequately represented. The guardian ad litem must be an attorney. The guardian ad litem must make an independent investigation of the circumstances surrounding the issues being brought before the Probate Court and must see that the best interest of the person is considered and protected throughout the proceedings.

A guardian ad litem is frequently appointed when controversy exists or develops in a particular proceeding and the Court needs objective assistance in determining the best possible solution for the person.

34. Q- What Is A Visitor?

A - A Visitor is a person appointed by the Probate Court who represents "...the eyes, ears and common sense" of the Court. The Visitor must actually visit the individual alleged to be incapacitated and also the prospective guardian and/or conservator. The Visitor's report provides the Court with a better opportunity to make an appropriate judgment on behalf of the person because the Visitor will have actually interviewed the prospective guardian and/or conservator, will have assessed the living arrangements, and will be able to make knowledgeable recommendations on behalf of the ward and/or protected person.

35. Q- When Is A Visitor And/Or Guardian Ad Litem Appointed?

A - The Probate Court must appoint a Visitor, guardian ad litem, or attorney (unless the individual has an attorney of his/her own) for the allegedly incapacitated person. The court may appoint any of the above at any time, at its own discretion, and in certain circumstances -- especially on contested matters -- may appoint all three. ([5-303\(b\)](#); [5-307\(b\)](#))

36. Q - What Does A Guardian Ad Litem Do?

A - The guardian ad litem independently investigates the circumstances and issues surrounding the requested appointment of guardian and/or conservator, keeping in mind that the best interest of the allegedly incapacitated person is to be protected at all times. The primary responsibility of the guardian ad litem is to provide the Court with an objective assessment of the situation and to provide recommendations that, both

procedurally and substantively, represent the best interest of the person he/she is appointed to represent.

The guardian ad litem must meet with the allegedly incapacitated person and tell him/her about the pending guardianship proceedings and must try to determine the person's position regarding 1) being adjudicated disabled, 2) the proposed guardian, 3) any changes in residential placement, 4) changes in care that might result from the guardianship, and 5) whatever else the court may think is appropriate. The guardian ad litem files a written report with the court and testifies concerning the appropriateness of guardianship.

The guardian ad litem represents the person's best interest at all court hearings and is permitted to examine and cross-examine all witnesses being presented.

37. Q - What Does A Visitor Do?

A - The Visitor must actually visit and interview both the prospective ward and the prospective guardian and/or conservator, must explain the meaning and possible consequences of the court proceeding to the person, and must find out whether this person wishes to attend the hearing. The Visitor must also recommend the appointment of a guardian ad litem and/or attorney for the prospective ward if he/she thinks this is necessary. The Visitor's report must be filed with the Probate Court at least 10 days before the hearing is held. ([5-303\(c\)](#); [5-407 \(b-1\)](#))

38. Q - How Does The Role Of Guardian Ad Litem Differ From That Of The Attorney For The Incapacitated Person?

A - There is a distinct difference between the two roles. If an attorney represents an allegedly incapacitated person, he/she is responsible for providing legal representation of the wishes of the client and is to litigate any and all legal issues on behalf of the allegedly incapacitated person.

A guardian ad litem provides an objective assessment to the court of all circumstances surrounding the requested appointment and advocates as to what he or she determines to be in the best interest of the person. The guardian ad litem also makes recommendations to the court on behalf of the prospective ward.

39. Q - What Will It Cost To Obtain A Private Guardianship?

A - Forms must be purchased from the court and a filing fee will be assessed. The cost could be anywhere from \$25.00 to \$150.00 plus the cost of obtaining an evaluation report from a physician or psychologist. In addition, the proposed ward must be served notice of hearing in person by the guardian ad litem or visitor.

An attorney can also be retained if you feel more comfortable having an attorney handle the matter or if you feel the guardianship is complex or may be contested by others. Attorney costs vary widely and, therefore, should be determined before hiring the attorney.

Reasonable costs of the guardianship, including those for a guardian ad litem, may be reimbursed from funds, if any, belonging to the ward. ([5-503\(b\)](#)). If, however, the appointment of a public guardian and/or public conservator is sought for an allegedly incapacitated person who has, within three months of the filing of a petition, received services from the Department of Health and Human Services, these agencies may bear the cost of the appointments, depending on the limit of their budgets. If that agency can demonstrate that another more appropriate funding source is available, the court may order that source to pay the expenses.

40. Q - What will It cost a relative or interested person to obtain a Public Guardianship?

A - Generally, no cost is involved for the relative or interested person when the State petitions for public guardianship. However, as a relative or interested person, you may be asked to spend time with an agency representative to provide appropriate information.

41. Q - What Are The Rights Of Parents If Someone Else Becomes The Private Or Public Guardian Of Their Adult Child? And Are These Rights Given Up Forever?

A - When a guardian is appointed, that guardian has the legal right and responsibility for decisions made on behalf of the ward. The guardian is usually encouraged to involve the parents in decisions regarding their adult child and to encourage the parents' continuing involvement. However, there is no legal requirement for this in the Probate Code.

The parents do have the right at any time to institute court proceedings to change or terminate the guardianship. The court will act in the best interests of the ward. ([5-312](#))

42. Q - When A Person Is Placed Under Guardianship, Is This Permanent?

A - Guardianship is usually considered as being long-term; however, a guardian's authority and responsibility may terminate under the following circumstances:

- a. automatically upon the death of the ward or guardian.
- b. the resignation of the guardian.
- c. removal of the guardian by the court.
- d. the Probate Court, upon petition, finds that the guardianship can be ended or reduced because of improvement in the ward's condition, development of new skills, etc.

Since people and their circumstances can change and improve over the course of their lives, the need for guardianship should be examined periodically to determine whether a change or modification of the guardianship is needed. ([5-306](#) and [5-307](#))

43. Q - How Can The Initial Order Of Guardianship Be Changed Or Modified?

A - The Probate Court may change or modify the guardianship upon a request from the guardian, the ward, or any other person interested in the welfare of the ward. It can also initiate the action itself, if it has sufficient information to initiate the change. Any person interested in the welfare of the ward can request, at any time, that a "Guardianship Review" hearing be scheduled by the Probate Court. The Court can then limit or expand the guardianship order as it thinks is appropriate, or if the Court is satisfied that guardianship is no longer necessary, it can terminate the existing guardianship. ([5-307](#))

44. Q - If There Are Concerns About A Current Guardian Or About The Guardianship Itself, How Can this Be Brought To The Probate Court's Attention?

A - Any person or organization interested in the welfare of the ward can either write an informal letter to the Court or file a formal petition requesting that the guardianship be reviewed and/or the guardian be removed or resign, or addressing any other concern specific to the guardianship. Although there is no provision under the Probate Code for a guardianship "interim order," the Probate Court can issue appropriate orders under its general jurisdictional powers. ([1-301](#) and [1-302](#))

45. Q - How Can Objections Be Made to The Actions Of A Public Or Private Guardian?

A - Either the public or private guardian may be approached directly with the concern or objection. If this approach doesn't work, then the objection may be taken directly to the Probate Court responsible for the guardianship. ([5-307](#))

However, in the case of the public guardian, a reasonable next step is to contact the supervisor of the agency representative before contacting the court, for it may be possible to resolve the issue within the agency.

46. Q - What Should The Guardian Do If He/She Is Going To Be Unavailable To Make Decisions On Behalf Of The Ward?

A - Obviously, preplanning is very important. The guardian can give power of attorney to someone else to make emergency decisions in the event of the guardian's absence. If the ward lives in a boarding or nursing home, institution, etc., a copy of the specific power of attorney for emergency treatment of the ward should be given to the facility to be kept on file. This power of attorney must be filed with the appropriate Probate Court. ([5-104](#))

47. Q - Can The Guardian Delegate Any Of His/Her Duties And Powers to Someone Else?

A - As long as the guardian acts in the best interest of the ward, he/she may delegate any or all of his/her responsibilities to another person or organization through a Power of Attorney for up to six months. However, even if power of attorney is given to someone else, the guardian continues to maintain the ultimate responsibility for assuring that the needs and best interests of the ward are met. ([5-104](#))

48. Q - What Should Be Done If The Guardian Is Unable Or Unwilling To Fulfill His Responsibilities As Guardian?

A - The guardian, ward, or any interested person may at any time approach the Probate Court either to have a different guardian considered for the ward or to request a change in the guardianship responsibilities. ([5-307](#))

49. Q -What Can You Do If You Suspect That A Ward Is Being Abused, Neglected, Or Exploited?

A - The suspected abuse, neglect, or exploitation should be reported immediately. Your identity can be kept confidential.

Regarding wards with mental retardation, and/or autism the report should be made to the OACPDS regional offices during business hours. At all other times, the crisis hotlines should be notified. The OACPDS Adult Protective Unit investigates the protective referrals.

Regarding all other wards, the OES Adult Protective Intake should be called at 1-800-624-8404 (Voice/TTY).

While anyone may make a report of suspected abuse, neglect, or exploitation of a person they believe is incapacitated, certain professionals are required by law to report: an allopathic or osteopathic physician, medical intern, medical examiner, physician's assistant, dentist, chiropractor, podiatrist, registered or licensed practical nurse, certified nursing assistants, Christian Science practitioner, social worker, psychologist, pharmacist, physical therapist, speech therapist, occupational therapist, mental health professional, law enforcement official, coroner, emergency room personnel, and ambulance attendant or emergency medical technician.

50. Q - If Public Guardianship Is Obtained For A Relative or Client, What Can Be Expected From The Bureau Of Mental Retardation Or The Department Of Human Services?

A - If the Office of Adults with Cognitive and Physical Disability Services is the public guardian, you can expect case management services to be provided. These could include an individualized person-centered program plan, overseeing financial affairs and daily living programs, and obtaining psychological, medical, dental, advocacy, and any other professional services needed. A Department representative will be in regular contact with the family involved in decisions made for their relative. The guardian, however, is ultimately responsible for making the final decisions.

The Office of Elder Services may be the public guardian for an incapacitated adult who does not have mental retardation or autism. They can provide the same basic services to the ward as described above.

Both agencies must develop and submit an annual individualized guardianship plan to the court.

51. Q - What Happens If a Guardian Dies and The Ward Is In Continuing Need Of Guardianship?

A - An interested party must petition the court for the appointment of a successor guardian. Procedures for the appointment of a successor guardian are similar to those for the appointment of a regular guardian. If the guardian has designated a successor guardian in his/her will and the ward does not disagree with the selection, then the successor guardian only needs to file an acceptance with the appropriate Probate Court.

52. Q - How Can Parents Be Assured That Someone Will Act As A Guardian For Their Ward After The Parents' Death?

A - Parents who feel that, after their death, there will continue to be a need for a guardian for their ward may name someone in their wills to be the guardian. This is called a testamentary appointment. The guardianship will become effective after the proposed guardian files his/her acceptance in the court in which the will is probated. The proposed guardian must have given the ward, the nearest adult relative or anyone entrusted with the care of the ward, a written notice of intent at least seven (7) days before filing the acceptance with the court.

The parents should also provide in their wills an alternate choice for guardian in case the proposed guardian is unable to accept the appointment. Remember that the ward or other interested persons always retain the right to contest the guardianship. ([5-301](#))

53. Q - From Whom Can Information Be Obtained On Estate Planning To Assure The Future Financial Well-being Of the Ward?

A - Appropriate experts in the estate planning field can be consulted: attorneys with estate planning backgrounds, banks, and other financial management organizations, etc. For additional information, there are also numerous publications available on estate planning for disabled family members.

54. Q - What Do I Need To Know If My Ward Becomes Seriously Ill?

A - As guardian, you will be responsible for making medical decisions on behalf of your ward. When asked to provide consent for medical treatment, it is important that you are provided with a complete explanation of any proposed treatment including expected benefits and possible side effects or complications.

A guardian is by no means obligated to provide medical consent unless she or he believes that such treatment is in the best interest of the ward. If there is any doubt about the benefits or need for the proposed medical treatment, a second opinion should be sought. In situations in which the person's condition is determined to be terminal and/or the chances of recovery from a life-threatening illness or accident are slight, you may be asked to consider the appropriateness of a "Do Not Resuscitate" order (sometimes referred to as a "No Code") for your ward.

55. Q - What Is An Advance Directive?

A - When a person is dying, there are usually important decisions to be made about whether the doctors should continue to keep the person alive using extraordinary life-sustaining procedures, such as cardiopulmonary resuscitation (CPR), artificial respirators, and artificial feeding.

The dying person may still be able to give the doctors instructions about treatment. Often, however, the patient is not able to communicate with the doctor because he/she is unconscious, heavily medicated, or otherwise unable to provide informed consent. When this happens, the patient's relatives/guardian may be consulted about what treatment should be given to the patient.

It is always easier if the patient has already completed a Living Will, Advance Directive, or Durable Power of Attorney for Health Care. In these forms, the patient can state what his/her preferences are regarding the use of life-sustaining treatment, such as nutrition and hydration (artificial feeding). In the form, the patient directs the doctor to withhold treatment or the patient appoints another person (usually a relative or friend) to give the doctor these directions. ([5-701](#)) The forms, with directions for filling them out, are available from the agencies listed at the end of this booklet.

However, the law allows only people who are 18 years of age or older and still "of sound mind" to execute living wills. When a person has a guardian, then a living will signed by that person, while under guardianship, is not legally binding. It still may be a good idea for you to talk to your ward about what he/she would want for treatment, for the extraordinary measures to be used to keep him/her alive if ever terminally ill. This way, if you are later consulted by doctors, you can make a decision which reflects your ward's wishes.

The circumstances under which such health care decisions may be made by the guardian are specified in Maine statute:

1. Unless otherwise authorized by the court, the guardian must comply with the ward's instructions and wishes, if any, made while the ward had capacity and to the extent they are known to the guardian. The guardian may not revoke the ward's advance care directive unless approved by the court.
2. The health care decision of the person named in a power of attorney, if any, to make health care decisions for the ward takes precedence over that of the guardian, unless otherwise ordered by the court.
3. A health care decision made by the guardian is effective without court approval except when the guardian's decision is contrary to the ward's instructions and wishes made when the ward had capacity, or when the guardian seeks to withhold or withdraw life-sustaining treatment from the ward against the advice of the ward's primary physician and in the absence of instructions from the ward, made when the ward had capacity. ([Title 18-A, 5-806](#))

56. Q - What Is A "Do Not Resuscitate Order"?

A - A "Do Not Resuscitate" (DNR) or No Code order is an instruction to treating medical staff that if a patient's breathing or heartbeat stops, methods to revive the person (e.g. CPR, respirator, and other means of artificial life support) should not be used. The order can specify which methods would be withheld. For example, the order could call for providing CPR but withholding ventilation or other artificial respiration. A DNR is intended to relieve pain and suffering when an individual is in the end stages of a terminal condition and when resuscitation would only prolong the dying process. You will probably be asked to sign a statement indicating your wishes regarding resuscitation and artificial life supports for your ward if he/she is admitted to a medical facility. While there are many factors that go into this decision, including the wishes of the ward, the guardian has the ultimate authority to decide what measures will be carried out. For this reason, it is important to gather as much information as possible about the benefits and risks to your ward of the various options, as well as the potential consequences.

If there are any ambiguities or doubts, it is advisable to seek additional medical and other opinion and/or postpone the decision (not approve the order) until these questions and concerns can be resolved to your satisfaction.

57. Q - How Can Guardianship Be Ended?

A - The Probate Court may remove a guardian and appoint a new one or declare that the ward no longer needs a guardian. The Probate Court may undertake either of these actions upon a request to do so from the guardian, the ward, or another interested person or it may initiate these actions itself based on information known to the Court. ([5-306](#))